

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],

Claimant

BY: [REDACTED]

Reg. No: 2008-20235

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 25, 2009

Van Buren County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on March 25, 2009, in Hartford, Michigan. Claimant's representative (POA) appeared and testified under oath on claimant's behalf. Claimant was unable to attend because he resides in a long-term care (LTC) facility.

The Administrative Law Judge appeared by telephone from Lansing.

ISSUE

Did the department correctly notify claimant of his right to dispose of his [REDACTED] account on September 16 and December 19, 2005 when the local office completed an Initial Asset Assessment?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant is an MA-LTC recipient. Claimant resides in a long-term care facility in [REDACTED]. He entered the LTC facility in 2005.
- (2) His community spouse/wife lives in the family home in [REDACTED].
- (3) In March 2005, claimant's Power of Attorney requested an asset assessment to determine whether any financial divestments needed to be made in order to insure appropriate MA coverage.
- (4) The local office completed Initial Asset Assessments (DHS-4585) on September 16 and December 19, 2005.
- (5) For some unknown reason, the caseworker who prepared the 2005 Initial Asset Assessments failed to include claimant's [REDACTED] account ([REDACTED]) as an asset as required by department policy.
- (6) The September 16, 2000 assessment (Exhibit A1, pages 51A and 52) lists claimant's assets but does not list claimant's [REDACTED] account. Likewise, the December 19, 2005 asset assessment (Exhibit A1, pages 55-57) lists claimant's assets, but does not list his [REDACTED] account.
- (7) As a result of the failure to list claimant's [REDACTED] account in the September and December asset assessments, claimant did not receive notice that he could transfer his [REDACTED] assets to a third party and enhance his ability to qualify for MA/LTC. The oversight regarding the [REDACTED] account was not discovered until May of 2008 during a pre-hearing conference which the ES worker held with the Power of Attorney.
- (8) Based on the discovery of the error regarding the [REDACTED] account, the POA requested a hearing on May 7, 2008.

(9) During the hearing, the parties stipulated that claimant had not received appropriate notice about his right to transfer his [REDACTED] account to his community spouse and thereby enhance his eligibility for MA/LTC. The parties stipulated that in order to correct the department error, it would be necessary to amend the December 19 Initial Asset Assessment and include the [REDACTED] account.

(10) The parties also stipulated that based on department policy, claimant was entitled to a one-year window to make whatever financial adjustments are necessary regarding the [REDACTED] account, in order to enhance claimant's ability to qualify for MA-P/LTC.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Medicaid/LTC program provides nursing home care for low income persons. The department has a community asset policy which allows persons who require long-term care to distribute their assets to a community spouse in order to enhance the community spouse's ability to care for herself in the family home and at the same time to allow the incapacitated spouse to receive MA/LTC to cover his nursing home expenses. PAM 210, 600 and PEM 402 and 400.

In this case, claimant was not given the opportunity, as required by department policy, to distribute his Fidelity assets to his community spouse. Policy clearly provides that the Initial Asset Assessment is to include all assets covered by the long-term care policy. The policy also provides that the MA/LTC spouse is entitled to a one-year window in order to adjust his assets to enhance the eligibility of the LTC person.

Since the local office did not follow DHS policy and did not provide notice and an opportunity to claimant to adjust his assets during the one year window, the Administrative Law Judge concludes that claimant is entitled to have an amended asset assessment prepared and to have a one year window to make necessary financial adjustments.

These modifications are necessary because the department failed to follow its own policy regarding notice under PEM 402. **The department's failure to provide claimant with adequate notice, as required by policy, is reversible error.**

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department incorrectly issued a closure notice to claimant based on his Fidelity assets.

Therefore, the department shall prepare an amended asset assessment account and include the [REDACTED] assets at the appropriate locations on the asset assessment record. In addition, the department shall notify claimant's representative that claimant has a one-year window, from the date the amended assessment is mailed, to make any appropriate financial adjustments in order to ensure that claimant and his community spouse have received all of the benefits to which they are entitled under the department's current MA/LTC/community spouse policies.

Accordingly, the department's negative action is, hereby, REVERSED.
SO ORDERED.

/s/

Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 27, 2009

Date Mailed: March 27, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JWS/tg

cc:

